



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse12091451
[REDACTED]

[REDACTED],
Complainant

v.

COLIMA RESTAURANT,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred in this instance. 910 IAC 1-3-2(b).

On May 7, 2012, [REDACTED] ("Complainant") filed a Complaint with the Commission against Colima Restaurant ("Respondent") alleging discrimination on the basis of gender in violation of the Indiana Civil Rights Law (Ind. Code §22-9, *et. seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

The issue before the Commission is whether the Complainant was subjected to a hostile work environment due to her gender. In order to prevail, Complainant must show that: (1) she experienced unwelcome offensive comments or actions; (2) the comments/actions were severe and/or pervasive; (3) she informed Respondent that the comments were unwelcome; and (4) Respondent failed to take corrective action to address the hostile work environment.

Respondent is a family owned restaurant with 9 employees. The restaurant has several owners, Jose Jimenez, Benjamin Jimenez (president), Candelavio Jimenez Agvila (vice-president), and Maria Jimenez (secretary) and during the relevant time frame, lacked a formal employee handbook.

It is clear that Complainant was subjected to severe and/or pervasive unwelcomed comments from Respondent. Complainant, a line cook, alleged that her direct superior, Jose Jimenez, repeatedly yelled at her as well as referred to her as "bitch," "stupid," and "slow" over her multi-year tenure with Respondent. Witness testimony corroborates Complainant's allegations, stating that Jose Jimenez refers to his all female staff in a demeaning and offensive



manner on a regular basis. In the past, when Respondent had male employees, witness testimony states that Jose Jimenez treated them in a more favorably manner. While Complainant admits that she failed to make a formal report of harassment, she contends that she spoke with Jose Jimenez about the offending behavior as well as Maria Jimenez and another owner about the harassment; however, no corrective action was taken. While Respondent currently has an employee handbook, no such handbook existed at the time of the harassment and Respondent acknowledges that there were no formal policies or procedures in place for employees to report workplace harassment. Rather, Respondent had monthly meetings in which employees could discuss their concerns. However, testimony indicates that the last meeting was held in July 2012 and Jose Jimenez used profanity toward the staff in that meeting, treating them in a hostile, disrespectful, and rude manner.

Based on the above findings, probable cause exists to believe that an unlawful discriminatory practice may have occurred in this instance. A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

July 1, 2013
Date

Akia A. Haynes
Akia A. Haynes, Esq.,
Deputy Director
Indiana Civil Rights Commission